

Notice of Allowability

Application No.

09/423,575

Examiner

Suryaprabha Chunduru

Applicant(s)

SMEEKENS ET AL.

Art Unit

1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 6/14/04.
2. ☒ The allowed claim(s) is/are 1-4.
3. ☒ The drawings filed on 11/9/04 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

JEFFREY FREDMAN
PRIMARY EXAMINER

9/9/04

DETAILED ACTION

1. Applicants' response to the office action and amendment filed on June 14, 2004 have been entered and considered.
2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Karen Blochlinger on September 9, 2004.

Please amend the claims as follows:

Replace "Figure 1" in Claims 1 through 4 with "SEQ ID No. 1".

Thus the amended claims should read as follows:

1. A process for modifying flowering in plants comprising generating transformed plants with a construct comprising DNA sequence coding for an ATH1 gene product under the control of a promoter functional in plants, wherein the gene product is encoded by the nucleotide sequence of SEQ ID No. 1 and modifies flowering in plants.
2. A process as claimed in claim 1 whereby the flowering process in plants is promoted by transforming the plants using a construct that inhibits the production of ATH1 protein, wherein the ATH1 protein is encoded by the nucleotide sequence of SEQ ID No. 1.
3. A process as claimed in claim 2 in which the construct is adapted to express RNA antisense to RNA produced by the ATH1 gene, wherein the ATH1 gene comprises the nucleotide sequence of SEQ ID No. 1.

Art Unit: 1637

4. A process as claimed in claim 1 whereby the flowering process in plants is retarded by transforming the plants using a construct that promotes the production of the ATH1 protein, wherein the ATH1 protein is encoded by the nucleotide sequence of SEQ ID No. 1.

3. The following is an examiner's statement of reasons for allowance:

Claims 1-4 are allowed.

The present invention is directed to a process of modifying flowering in plants comprising generating transformed plants with a construct comprising a DNA sequence coding for an ATH1 gene product under the control of a promoter functional in plants, wherein the gene product is encoded by the nucleotide sequence of SEQ ID No.1. The closest prior art (Quaedvileg et al.) teaches the ATH1 gene product, however the prior art did not teach or suggest expression of ATH1 gene product and a method for generating transformed plants using the construct comprising SEQ ID No. 1. Applicants' arguments regarding the teachings of Quaedvileg et al. are fully considered and found persuasive because as pointed out by the Applicants, Quaedvileg et al. could not succeed in generating transformed plants using ATH1 gene product and the hypothesis made by Quaedvileg et al., that the presence of upstream AUGs in the leader sequence in ATH1 gene product represses the ATH1 mRNA translation, is disproved by the instant invention. Thus the instant invention was not taught or obvious over the closest prior art.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Art Unit: 1637

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suryaprabha Chunduru whose telephone number is 571-272-0783. The examiner can normally be reached on 8.30A.M. - 4.30P.M, Mon - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and - for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


Suryaprabha Chunduru.
September 9, 2004.


JEFFREY FREDMAN
PRIMARY EXAMINER

9/9/04